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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,564	10/30/2002	Saeed Benjamin Niku	0687.006	7634

26375 7590 12/21/2004

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1010 PEACH STREET
SAN LUIS OBISPO, CA 93401

EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,564

Applicant(s)

NIKU, SAEED BENJAMIN

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13 and 16 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

Claims 1, 3, 8, 10, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 240,780). Smith discloses a fastener comprising a set of spiral teeth (B) and a core (A2). The core is disclosed as being made of wood and therefore would inherently be selectively compliant. The spiral teeth are connected to the core at both ends (a,a') by a press type fit which would include pinching. Lastly, the fastener is provided with a head (A') which is read as both a "screw" and "bolt" head since there are not any distinguishing features provided to the head.

Claims 1, 2, 4, 7, 8, 9, 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated Constantin (US 2,045,757). Constantin discloses a "fastener" comprising spiral teeth (13) which interlock one into another (at 17) on a selectively compliant core (9) which is formed of spirally wound wires (10). The ends of the flexible core are welded (pg. 2, column 1, line 36) to the spiral teeth (at 18).

Allowable Subject Matter

Claims 5, 6, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Remarks

Applicant argues that Smith does not disclose a selectively compliant core and Constantin does not disclose a fastener.

Initially in regards to Smith applicant contends that the wood core is not compliant but, instead is weaker and may break more easily than metal and would fail under stress. In response, the examiner disagrees. Admittedly, wood is a weaker material than that generally used to make fasteners however, that does not preclude it from also being compliant. Indeed, wood is compliant and flexible and laterally flexible because it will bend when stressed at least up until its point of failure so, the wood core would read on the limitation of "selectively compliant". Applicant is reminded that "selectively compliant" is to be given its broadest reasonable interpretation and, limitations from the specification are not to be read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In regards to Constantin, applicant argues that Constantin is a conveyer and subsequently not a "fastener". In response, the examiner agrees however, the limitation of a fastener is found only in the preamble and a preamble is generally not accorded any patentable weight where it merely recites the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190

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USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

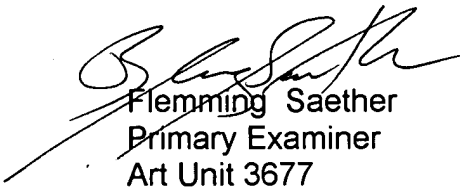
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Flemming Saether
Primary Examiner
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